

## **Appendix C**

Arizona Supreme Court  
Task Force on the Code of  
Judicial Conduct

# **PROPOSED NEW CODE OF JUDICIAL CONDUCT**

*Overview of Recommended Changes  
to the 2007 ABA Model Code*

January 9, 2009

## OVERVIEW OF RECOMMENDED CHANGES TO THE MODEL CODE OF JUDICIAL CONDUCT

This table explains the changes in the ABA 2007 Model Code recommended by the Task Force on the Code of Judicial Conduct. Additions are underlined and deletions are highlighted by ~~strikeovers~~. Differences between the 1990 and 2007 Model Codes are described in the ABA *Model Code of Judicial Conduct*, Appendix B, (2007) 74.

Reference	Recommended Changes	Explanation
Preamble Paragraph 1	No changes.	Approved as written.
Preamble Paragraph 2	No changes.	Approved as written.
Preamble Paragraph 3	<del>The Model</del> <u>This</u> code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates.	Approved as amended. The preamble should refer to the Arizona code rather than the model code.
Scope Paragraph 1	<del>The Model</del> <u>This</u> code of Judicial Conduct consists of four canons, numbered rules under each canon, and comments that generally follow and explain each rule.	Approved as amended. The paragraph should refer to the Arizona code rather than the model code.
Scope Paragraph 2	No changes.	Approved as written.
Scope Paragraph 3 and 4	The comments that accompany the rules serve two functions. First, they provide guidance regarding the purpose, meaning, and proper application of the rules. They contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. <del>Comments neither add to nor subtract from the binding obligations set forth in the rules. Therefore, when a comment contains the term “must,” it does not mean that the comment itself is binding or enforceable; it signifies that the rule in question, properly understood, is obligatory as to the conduct at issue. [4]</del> Second, the comments identify aspirational goals for judges. To implement fully the principles of this code as articulated in the canons, judges should strive to exceed the standards of conduct established by the rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.	Approved as amended. Paragraphs 3 and 4 were combined because the ideas are related. The language indicating comments are not binding, even though they are designed to explain binding rules, was eliminated because a number of comments provide substantive exceptions to the scope of the rules that are not otherwise evident.
Scope Paragraph 5	The rules of the <del>Model Code of Judicial Conduct</del> <u>in the code</u> are rules of reason that should be applied . . . .	Approved as amended. The reference to the model code was replaced with a generic reference to the code.
Scope Paragraph 6	<del>Although</del> The black letter of the rules is binding and enforceable; <del>It is not contemplated</del> <u>intended</u> , however, that every transgression will result in the imposition of discipline.	Approved as amended. The task force prefers more direct language here.
Scope Paragraph 7	No changes.	Approved as written.

Terminology In general	The first time any term listed below is used in a Rule in its defined sense, it is followed by an asterisk (*).	Approved deletion. Asterisks are useful in the model code but unnecessary in the Arizona code.
Terminology Aggregate	<del>“Aggregate,” in relation to contributions for a candidate, means not only contributions in cash or in kind made directly to a candidate’s campaign committee, but also all contributions made indirectly with the understanding that they will be used to support the election of a candidate or to oppose the election of the candidate’s opponent. See Rules 2.11 and 4.4.</del>	Approved deletion. The definition is no longer needed because Rules 2.11 and 4.4, the only rules in which this term appears, were deleted. <i>In addition, citations to rules in which the defined terms appear were omitted in this section.</i>
Terminology	“Appropriate authority.”	Approved as written but without citations to rules.
Terminology	“Contribution.”	Approved as written but without citations to rules.
Terminology	“De minimis.”	Approved as written but without citations to rules.
Terminology	“Domestic partner.”	Approved as written but without citations to rules.
Terminology	“Economic interest” means ownership of more than a de minimis legal or equitable interest <u>and is further defined, for purposes of compliance with state law, in A.R.S. § 38-502(11).</u> Except for situations in which the judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include: . . . .	Approved as amended and without citations to rules. A reference to the statute governing conflicts of interest of public officers was added consistent with the change in Rule 2.11, Comment 6.
Terminology	“Fiduciary.”	Approved as written but without citations to rules.
Terminology	“Impartial, impartiality, and impartially.”	Approved as written but without citations to rules.
Terminology	“Impending matter.”	Approved as written but without citations to rules.
Terminology	“Impropriety.”	Approved as written but without citations to rules.
Terminology	“Independence.”	Approved as written but without citations to rules.
Terminology	“Integrity.”	Approved as written but without citations to rules.
Terminology	<u>“Judge” means any person who is authorized to perform judicial functions within the Arizona judiciary, including a justice or judge of a court of record, a justice of the peace, magistrate, court commissioner, special master, hearing officer, referee or pro tempore judge.</u>	Approved addition. The definition was amended and moved here from the Application section because the term applies throughout the code.

Terminology	“Judicial candidate.”	Approved as written but without citations to rules.
Terminology	“Knowingly, knowledge, known and knows.”	Approved as written but without citations to rules.
Terminology	“Law” encompasses court rules as well as <u>ordinances, regulations, statutes, constitutional provisions, and decisional law.</u> ”	Approved as amended and without citations to rules. Additions cover municipal laws.
Terminology	<del>“Member of the candidate’s family” means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the candidate maintains a close familial relationship.</del>	Approved deletion. The term was omitted because it does not appear in the Arizona version.
Terminology	“Member of the judge’s family.”	Approved as written but without citations to rules.
Terminology	“Member of a judge’s family residing in the judge’s household.”	Approved as written but without citations to rules.
Terminology	“Nonpublic information” means information that is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order or impounded or communicated in camera, and information offered in <u>grand jury proceedings, presentencing reports</u> dependency cases or psychiatric reports.	Approved as amended and without citation to rules. Information in grand jury proceedings and presentencing reports is not always confidential in Arizona.
Terminology	“Pending matter.”	Approved as written but without citations to rules.
Terminology	“Personally solicit.”	Approved as written but without citations to rules.
Terminology	“Political organization.”	Approved as written but without citations to rules.
Terminology	“Public election” includes primary and general elections, partisan elections, nonpartisan elections, <u>recall elections</u> , and retention elections.	Approved as amended and without citations to rules. The definition was expanded to include another type of election applicable in Arizona.
Terminology	“Third degree of relationship.”	Approved as written but without citations to rules.
<b>Application</b> In general	† <u>Part A.</u> Applicability of this Code	Approved as amended. Roman numerals were deleted because they are not used elsewhere in the code and are awkward to use and cite.
Application Part A(1)	<del>(A) (1) The provisions of the code apply to all full-time judges. Parts H B through V D of this section identify those provisions exemptions that apply to four distinct categories of part-time judges. The four categories of judicial service in other than a full-time capacity are necessarily defined in general terms because of the widely varying forms of judicial service. Canon 4 applies to judicial candidates.</del>	Approved as amended. The language was simplified to emphasize that the code applies to all judges except as noted in this section. The reference to judicial candidates was emphasized by moving it to a separate section.

Application	<del>(B) A judge, within the meaning of this code, is anyone who is authorized to perform judicial functions, including an officer such as a justice of the peace, magistrate, court commissioner, special master, or referee. or member of the administrative law judiciary.</del>	Approved as amended. The definition of “judge” was moved to the Terminology section because it applies throughout the code.
Application Part A(2)	<del>(2) The provisions of Canon 4 applies apply to judicial candidates.</del>	Approved as amended. The reference to judicial candidates in Part A(1) was moved here to give it emphasis.
Application Part A, Comment 1	The rules in this code have been formulated to address the ethical obligations of any person who serves a judicial function <u>within the Arizona judicial branch</u> , and are premised upon the supposition that a uniform system of ethical principles should apply to all those authorized to perform judicial functions. <u>The code is not applicable to administrative law judges or administrative hearing officers in this state unless expressly adopted by statute or by agency rules. Such officers are generally affiliated with the executive branch of government rather than the judicial branch and each agency should consider the unique characteristics of particular positions in adopting and adapting the code for administrative law judges or administrative hearing officers. See Arizona Judicial Ethics Advisory Committee, Opinion 92-03 (January 31, 1992).</u>	Approved as amended. The language from the existing Arizona code was retained to emphasize that the code adopted in this state does not apply to administrative law judges and hearing officers outside the judicial branch.
Application Part A, Comment 1	2. The determination of which category and, accordingly, which specific rules apply to an individual judicial officer, depends upon the facts of the particular judicial service.	Approved as written.
Application Part A, Comment 3	3. <del>In recent years many jurisdictions have created</del> <u>Arizona has</u> what are often called “problem solving” courts, in which judges are authorized by court rules to act in nontraditional ways. . . . When local rules <u>or protocols known and consented to by the participants</u> specifically authorize conduct not otherwise permitted under these rules, they take precedence over the provisions set forth in the code. Nevertheless, judges serving on “problem solving” courts shall comply with this code except to the extent local rules <u>or protocols</u> provide and permit otherwise.	Approved as amended. The language was revised to clarify that participants in problem-solving courts can knowingly agree to rules and protocols that are different than those governing regular courts.
Application Part B	<del>H. Part B. Retired Judge Subject to Recall Available for Assignment</del> A retired judge <del>subject to recall for service, who by law is not permitted to practice law, available for assignment to judicial service</del> is not required to comply : <del>A. at any time with Rules 3.2 (appearances before governmental bodies and consultation with government officials), 3.3 (acting as a character witness), 3.4 (appointments to governmental positions), 3.7 (participation in educational, religious, charitable, fraternal, or civic organizations and activities), 3.8 (appointments to fiduciary positions), 3.9 (service as arbitrator or mediator), except while serving as a judge, or 3.10 (practice of law), 3.11 (financial, business or remunerative activities), 3.12 (compensation for extra-judicial activities), 3.13 (acceptance and reporting of gifts, loans, bequests, benefits, or other things of value), 3.14 (reimbursement of expenses and waivers of fees or charges), 3.15 (reporting requirements), and 4.1(A) (political and campaign activities of judges and judicial candidates in general). or</del> <del>B. at any time with Rule 3.8 (appointments to fiduciary positions).</del>	Approved as amended. This change conforms with the definitions used in Arizona. The task force also concluded that a broader range of exemptions should be available to retired judges and expanded the existing list to clarify what rules do and do not apply to these judges.

Application Part B, Comment	<del>I. For the purposes of this section, as long as a retired judge is subject to being recalled for service, the judge is considered to “perform judicial functions.”</del>	Approved deletion. This language is unnecessary because a retired judge in Arizona is not precisely the same as a judge subject to recall.
Application Part C	<del>III. Part C. Continuing Part-Time Judge A judge who serves repeatedly on a part-time basis by election or under on a continuing or periodic appointment, including a retired judge subject to recall who is permitted to practice law (“continuing part-time judge”) basis, but is permitted to devote time to another profession or occupation and whose compensation is less than that of a full-time judge, is not required to comply:</del>	Approved as amended. The definitions was modified slightly to conform with the definitions used in Arizona.
Application Part C(1)	<del>A. is not required to comply: (1) except while serving as a judge with Rules 2.10(A) and 2.10 (B) (judicial statements on pending and impending cases), except while serving as a judge; or</del>	Approved as amended. Moving the opening clause to the end of the preceding rule is better grammatical structure.
Application Part C(2)	(2) at any time with Rules 3.4 (appointments to governmental positions), 3.8 (appointments to fiduciary positions), 3.9 (service as arbitrator or mediator), 3.10 (practice of law), 3.11 (financial, business, or remunerative activities), 3.14 (reimbursement of expenses and waivers of fees or charges), 3.15 (reporting requirements), 4.1 (political and campaign activities of judges and judicial candidates in general), 4.2 (political and campaign activities of judicial candidates in public elections), 4.3 (activities of candidates for appointive judicial office), 4.4 (campaign committees), and 4.5 (activities of judges who become candidates for nonjudicial office); and	Approved as amended as written.
Application Part C(3)	(3) shall not practice law in the <u>specific</u> court on which the judge serves or in any court subject to the appellate jurisdiction of the <u>specific</u> court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.	Approved as amended. Because the superior court is a single, statewide court, the word “specific” was added to narrow application of the rule.
Application Part C Comment	When a person who has been a continuing part-time judge is no longer a continuing part-time judge, <del>including a retired judge no longer subject to recall,</del> that person may act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto only with the informed consent of all parties, and pursuant to any applicable <del>Model</del> Rules of Professional Conduct. <del>An adopting jurisdiction should substitute a reference to its applicable rule.</del>	Approved as amended. The reference to a retired judge and to the model rules noted here are unnecessary in the Arizona code.
Application	<del>IV. Periodic part-time judge. A periodic part-time judge who serves or expects to serve repeatedly on a part-time basis, but under a separate appointment for each limited period of service or for each matter;</del>	Approved deletion. The model code description does not apply to part-time judges as defined in Arizona.

Application	<p><del>(A) is not required to comply:</del>  <del>(1) with Rule 2.10 (Judicial Statements on Pending and Impending Cases), except while serving as a judge; or (2) at any time with Rules 3.4 (Appointments to Governmental Positions), 3.7 (Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities), 3.8 (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), 3.11 (Financial, Business, or Remunerative Activities), 3.13 (Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value), 3.15 (Reporting Requirements), 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General), and 4.5 (Activities of Judges Who Become Candidates for Nonjudicial Office); and</del></p>	Approved deletion. This is a continuation of the preceding section.
Application	<p><del>(B) shall not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.</del></p>	Approved deletion. The model code description does not apply to part-time judges as defined in Arizona.
Application	<p><del>V. Pro Tempore Part-Time Judge</del>  <del>A pro tempore part-time judge who serves or expects to serve once or only sporadically on a part-time basis under a separate appointment for each period of service or for each case heard is not required to comply:</del>  <del>(A) except while serving as a judge, with Rules 1.2 (Promoting Confidence in the Judiciary), 2.4 (External Influences on Judicial Conduct), 2.10 (Judicial Statements on Pending and Impending Cases), or 3.2 (Appearances before Governmental Bodies and Consultation with Government Officials); or</del>  <del>(B) at any time with Rules 3.4 (Appointments to Governmental Positions), 3.6 (Affiliation with Discriminatory Organizations), 3.7 (Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities), 3.8 (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), 3.11 (Financial, Business, or Remunerative Activities), 3.13 (Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value), 3.15 (Reporting Requirements), 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General), and 4.5 (Activities of Judges Who Become Candidates for Nonjudicial Office).</del></p>	Approved deletion. The description in the model code does not apply to pro tempore judges as defined in Arizona; therefore, this part was replaced with new Part D, below.
	<p><del>V. Part D. Pro Tempore Part-Time Judge</del>  <del>A <u>pro tempore periodic</u> part-time judge <u>is a person appointed pursuant to Article 6, § 31 of the Arizona Constitution or municipal charter or ordinance</u> who serves or expects to serve repeatedly on a <u>part-time less than full-time</u> basis, but under a separate appointment by a <u>presiding judge</u> for each limited period of service or for each matter. <u>is not required to comply:</u></del></p>	Approved as amended. The model code language was revised to conform to the Arizona definition of pro tempore part-time judge.

Application Part D(1)(a), continued	(1) <u>A pro tempore part-time judge</u> is not required to comply: ( <del>A</del> <u>a</u> ) except while serving as a judge with Rules 1.2 (promoting confidence in the judiciary), 2.4 (external influences on judicial conduct), 2.10 (judicial statements on pending and impending cases), 3.2 (appearance before governmental bodies and consultation with government officials), <u>3.3 (acting as a character witness)</u> ; or	Approved as amended. This is a continuation of the preceding section.
Application Part D(1)(b)	( <del>B</del> <u>b</u> ) at any time with Rules 3.4 (appointments to governmental positions), 3.7 (participation in educational, religious, charitable, fraternal, or civic organizations and activities), 3.8 (appointments to fiduciary positions), 3.9 (service as arbitrator or mediator, 3.10 (practice of law), 3.11 (financial, business, or remunerative activities), 3.13 (acceptance and reporting of gifts, loans, bequests, benefits, or other things of value), 3.15 (reporting requirements), 4.1 (political and campaign activities of judges and judicial candidates in general), and 4.5 (activities of judges who become candidates for nonjudicial office).	Approved as written.
Application Part D(2)	(2) <u>A person who has been a pro tempore part-time judge shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto except as otherwise permitted by Rule 1.12(a) of the Arizona Rules of Professional Conduct.</u>	Approved addition. The model code language was revised to conform to the Arizona definition.
Application Part D(3)	<u>(3) A pro tempore part-time judge who serves once or only sporadically in a specialized division of a court or in a court without specialized divisions may appear as a lawyer in such specialized division or court during such service.</u> <u>(4) A pro tempore part-time judge who serves repeatedly on a continuing scheduled basis in a specialized division of a court or in a court without specialized divisions shall not appear as a lawyer in such specialized division or court during such service.</u> <u>(5) A part-time pro tempore judge who is appointed to perform judicial functions of a non-appealable nature on a continuing scheduled basis shall not appear as a lawyer in other proceedings involving the function of the court in which the service was performed, but may appear as a lawyer in all other areas of practice before the court.</u>	Approved addition. The model code language was adapted to the Arizona definition.
Application Part D Comment	1. <u>The restrictions of Part D apply to the members of a pro tempore part-time judge's law firm.</u> 2. <u>The purpose of Part D is to allow the greatest possible use of part-time pro tempore judges to augment judicial resources in order to reduce case backlogs and the time necessary to process cases to disposition while minimizing any potential for the appearance of impropriety.</u>	Approved addition These exceptions, which are unique to the existing Arizona code, have been approved by the Arizona Supreme Court and should be retained in the new code.



Application Part D Comment, continued	<p><u>3. The language of Part D is intended to allow, at a minimum, the following current practices:</u></p> <p><u>(a) A lawyer sits as a part-time pro tempore judge for one domestic relations trial and during this time appears in the domestic relations divisions as a lawyer in other matters.</u></p> <p><u>(b) A lawyer sits as a part-time pro tempore juvenile judge two or more half days a week on a continuing scheduled basis and during this time appears in court as a lawyer in all types of proceedings except for juvenile matters.</u></p> <p><u>(c) A lawyer sits as a part-time pro tempore criminal judge in the after-hours and weekend initial appearance program and thereafter appears as a lawyer in the criminal divisions except that the lawyer does not appear in the initial appearance program on behalf of clients.</u></p> <p><u>(d) A lawyer sits on a continuing scheduled basis as a part-time pro tempore judge in <del>Globe</del> <b>Payson</b> a satellite court in one community and otherwise appears in <del>Globe</del> the main court located in a different community on all variety of matters, but does not appear in any proceeding in <del>Payson</del> the satellite court.</u></p> <p><u>(e) A lawyer sits on a continuing scheduled basis as a pro tempore part-time justice of the peace in one precinct and appears as a lawyer in a justice court in another precinct.</u></p> <p><u>(f) A lawyer sits once or only sporadically as a pro tempore part-time magistrate in a municipal court and otherwise appears as a lawyer in the same court on all variety of matters.</u></p> <p><u>(g) These comments replace Advisory Opinion 92-16 (issued December 8, 1992, and reissued March 8, 1993) dealing with ethical constraints on lawyers serving as pro tempore judges.</u></p>	Approved addition. This is a continuation of the preceding section.
Application Part E	<del>IV</del> <u>Part E. Time for Compliance by New Judges</u>	Approved as amended except for renumbering. New language in title to whom the rule applies.
Application Part E Comment 1	No changes.	Approved as written.
<b>Canon 1</b>	No changes	Approved as written.
Rule 1.1	No changes.	Approved as written.
Rule 1.1 Comment	<u>1. For a discussion of the judge's obligation when applying and interpreting the law, see Rule 2.2 and the related comment.</u>	Approved addition. This language was added to emphasize that a good faith interpretation of the law does not constitute a violation of this rule.
Rule 1.2	No changes.	Approved as written
Rule 1.2 Comment 1	No changes.	Approved as written.
Rule 1.2 Comment 2	No changes.	Approved as written.

Rule 1.2 Comment 3	No changes.	Approved as written.
Rule 1.2 Comment 4	No changes.	Approved as written.
Rule 1.2 Comment 5	5. Actual improprieties include violations of law, court rules or provisions of this code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge. <u>An appearance of impropriety does not exist merely because a judge has previously rendered a decision on a similar issue, has a general opinion about a legal matter that relates to the case before him or her, or may have personal views that are not in harmony with the views or objectives of either party. A judge's personal and family circumstances are generally not appropriate considerations on which to presume an appearance of impropriety.</u>	Approved addition. Examples of specific conduct that do not constitute the appearance of impropriety were added to help discourage frivolous complaints against judges for carrying out their lawful duties.
Rule 1.2 Comment 6	6. A judge should initiate and participate in <del>community outreach</del> activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this code.	Approved deletion. "Community outreach" is not defined in the code, and judges should be encouraged to engage in a broad-range of activities to promote public understanding.
Rule 1.3	No changes.	Approved as written.
Rule 1.3 Comment 1	No changes.	Approved as written.
Rule 1.3 Comment 2	2. A judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge. The judge may use <u>official judicial</u> letterhead <del>if the judge indicates that the reference is personal and</del> if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the judicial office.	Approved as amended The changes are intended to clarify and simplify the comment.
Rule 1.3 Comment 3	3. Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees, <u>by recommending qualified candidates for judicial office,</u> and by responding to inquiries from <u>and volunteering information to</u> such entities concerning the professional qualifications of a person being considered for judicial office.	Approved as amended. The new language clarifies that judges may recommend judicial candidates and provide information about them.

Rule 1.3 Comment 4	4. <del>Special considerations arise when judges</del> <u>A judge who</u> writes or contributes to publications of for-profit entities, <del>whether related or unrelated to the law.</del> A judge should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this rule or other applicable law. In contracts for publication of a judge's writing, the judge should retain sufficient control over the advertising to avoid such exploitation.	Approved as amended. The substituted language is more direct and clarifies that judges should not allow their office to be exploited.
<b>Canon 2</b>	No changes.	Approved as written.
Rule 2.1	2.1 Giving Precedence to <del>the</del> <u>Judicial Duties of Judicial Office</u> The <u>judicial duties of judicial office</u> , as prescribed by law, shall <u>a judge</u> take precedence over all of a judge's <del>personal and extrajudicial</del> <u>other</u> activities.	Approved as amended. The revised language clarifies that a judge's duties take precedence over a judge's other activities but allows a judge to appropriately tend to personal obligations.
Rule 2.1 Comment 1	No changes.	Approved as written
Rule 2.1 Comment 2	2. <del>Although it is not a duty of judicial office unless</del> Judicial duties <u>are those</u> prescribed by law; <del>In addition,</del> judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.	Approved as amended. The substituted language is more direct.
Rule 2.2	No changes	Approved as written.
Rule 2.2 Comment 1	No changes	Approved as written.
Rule 2.2 Comment 2	No changes	Approved as written.
Rule 2.2 Comment 3	3. <del>When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do</del> <u>A good faith error of fact or law does</u> not violate this rule. <u>However, a pattern of legal error or an intentional disregard of the law may constitute misconduct.</u>	Approved as amended. The revised language is a more accurate statement of the ethical standard governing errors.
Rule 2.2 Comment 4	4. It is not a violation of this rule for a judge to make reasonable accommodations to ensure <del>pro se</del> <u>self-represented</u> litigants the opportunity to have their matters fairly heard.	Approved as amended. Where possible the task force replaced terms of art with language that is more understandable to the public
Rule 2.3	No changes	Approved as written.
Rule 2.3 Comment 1	No changes	Approved as written.
Rule 2.3 Comment 2	"... <del>Even</del> Facial expressions and body language <del>can</del> <u>may</u> convey to parties and lawyers in the proceeding . . . ."	Approved as amended. Modest changes to reflect less certainty about potential misconduct.

Rule 2.3 Comment 3	No changes	Approved as written.
Rule 2.3 Comment 4	4. Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome. <u>See Arizona Supreme Court, Administrative Order 92-33 (Oct. 19, 1992), for the judiciary's sexual harassment policy.</u>	Approved as amended. Adding a citation to the applicable administrative order is helpful to those using the code.
Rule 2.4	No changes	Approved as written.
Rule 2.4(A)	A judge shall not be swayed by <u>partisan interests</u> , public clamor or fear of criticism.	Approved as amended. The additional language reminds judges to be non-partisan.
Rule 2.4(B)	No changes	Approved as written.
Rule 2.4(C)	No changes	Approved as written.
Rule 2.4 Comment 1	No changes	Approved as written.
Rule 2.5	No changes	Approved as written.
Rule 2.5(A)	A judge shall perform judicial and administrative duties competently, <del>and</del> diligently, <u>and promptly</u> .	Approved as amended. The existing code requires judges to decide promptly, and this standard should be retained.
Rule 2.5(B)	A judge shall <u>reasonably</u> cooperate with other judges and court officials in the administration of court business.	Approved as amended. The additional word was added to indicate that reasonableness is the standard for measuring cooperation.
Rule 2.5(C)	<u>A judge shall participate actively in judicial education programs and shall complete mandatory judicial education requirements.</u>	Approved addition. This provision is unique to the existing Arizona code and should be continued.
Rule 2.5 Comment 1	No changes.	Approved as written.
Rule 2.5 Comment 2	No changes.	Approved as written.
Rule 2.5 Comment 3	No changes.	Approved as written.
Rule 2.5 Comment 4	No changes.	Approved as written.

Rule 2.5 Comment 5	<u>5. Article 2, § 11 of the Arizona Constitution requires that “Justice in all cases shall be administered openly, and without unnecessary delay.” Article 6, Section 21 provides that “Every matter submitted to a judge of the superior court for his decision shall be decided within sixty days from the submission thereof. The supreme court shall by rule provide for the speedy disposition of all matters not decided within such period.” See Rule 91(e), Rules of the Supreme Court; A.R.S. § 12-128.01. In addition, A.R.S. § 11-424.02(A) prohibits a justice of the peace from receiving compensation if a cause “remains pending and undetermined for sixty days after it has been submitted for decision.” These and other time requirements are discussed in depth in Arizona Judicial Ethics Advisory Committee, Advisory Opinion 06-02 (April 25, 2006).</u>	Approved addition. In Arizona, the standard for determining the timeliness of decisions is established in the state constitution, statutes and court rules, supplemented by a major advisory opinion on the same subject. Reference to this information in the code is helpful to judges.
Rule 2.6	No changes.	Approved as written.
Rule 2.6(A)	No changes.	Approved as written.
Rule 2.6(B)	A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not <del>act in a manner that coerces</del> any party into settlement.	Approved as amended. Minor change to eliminate superfluous language.
Rule 2.6 Comment 1	No changes.	Approved as written.
Rule 2.6 Comment 2	2. The judge plays an important role in overseeing the settlement of disputes . . . .Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, <u>or is on appellate review</u> , (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, <del>and</del> (6) whether the matter is civil or criminal <u>and (7) whether the judge involved in the settlement discussions will also be involved in the decision on the merits.</u>	Approved as amended. The additional language provides other useful factors to consider in deciding upon an appropriate settlement practice for a case.
Rule 2.6 Comment 3	3. Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge’s best efforts, there may be instances when information obtained during settlement discussions could influence a judge’s decision-making during trial <u>or on appeal</u> and, in such instances, the judge should consider whether disqualification may be appropriate. See Rule 2.11(A)(1).	Approved as amended. The additional language recognizes that cases may be settled at the appellate level.
Rule 2.7	No changes.	Approved as written.

Rule 2.7 Comment 1	1. <del>Judges must be available to decide the matters that come before the court.</del> Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, judges must be available to decide matters that come before the courts. Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.	Approved as amended. The opening sentence of this comment is redundant with language in the next sentence.
Rule 2.7 Comment 2	<u>A judge is not ethically obligated to automatically recuse himself or herself from a case in which one of the litigants has filed a complaint against the judge with the Commission on Judicial Conduct. See Advisory Opinion 98-02.</u>	Approved addition. New language reminds judges not to disqualify themselves merely because a litigant files a complaint against them.
Rule 2.8	No changes.	Approved as written.
Rule 2.8(A)	No changes.	Approved as written.
Rule 2.8(B)	No changes.	Approved as written.
Rule 2.8(C)	(C). A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, <u>but may express appreciation to jurors for their service to the judicial system and the community.</u>	Approved as amended. The additional language is consistent with the Arizona practice as noted below.
Rule 2.8 Comment 1	No changes.	Approved as written.
Rule 2.8 Comment 2	2. Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case. <u>There are several exceptions to this general rule, however, and with certain qualifications judges may speak to a discharged jury following the return of a verdict. See Arizona Judicial Ethics Advisory Committee, Opinion 01-01 (reissued January 22, 2003). This rule does not preclude a judge from expressing appreciation to jurors for their service to the judicial system and the community or from communicating with jurors personally, in writing, or through court personnel to obtain information for the purpose of improving the administration of justice.</u>	Approved as amended. The reference to an advisory opinion explaining the approach adopted in Arizona is helpful to trial judges. The last sentence, which is based on an amendment being considered by the Ohio judiciary, is helpful and consistent with the opinion.
Rule 2.8 Comment 3	<del>[3] A judge who is not otherwise prohibited by law from doing so may meet with jurors who choose to remain after trial but should be careful not to discuss the merits of the case.</del>	Approved deletion. This provision is unnecessary in light of the preceding comment.
Rule 2.9	No changes.	Approved as written.

Rule 2.9(A)	No changes.	Approved as written.
Rule 2.9 (A)(1)	No changes.	Approved as written.
Rule 2.9 (A)(2)	(2) A judge may obtain the <del>written</del> advice of a disinterested expert on the law applicable to a proceeding, <del>before the judge, if the judge gives advance notice to the parties of the person to be consulted and the subject matter of the advice to be solicited, and affords the parties a reasonable opportunity to object and respond to the notice and to the advice received.</del>	Approved as amended. The ethical standard in Canon 3B(7)(b) of the existing code has worked well and should be retained.
Rule 2.9 (3)	(3) A judge may consult with court <del>staff and court officials</del> <u>personnel</u> whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, <del>provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does</del> <u>If in doing so the judge acquires factual information that is not part of the record, the judge shall make provision promptly to notify the parties of the substance of the information and provide the parties with an opportunity to respond. The judge may not abrogate the</u> responsibility personally to decide the matter.	Approved as amended. The ethical standard in Canon 3B(7)(c) of the existing code has worked well and should be retained. The model rule was amended accordingly.
Rule 2.9 (4)	No changes.	Approved as written.
Rule 2.9 (5)	No changes.	Approved as written.
Rule 2.9 (6)	<u>A judge may engage in ex parte communications when serving on therapeutic or problem-solving courts, if such communications are authorized by protocols known and consented to by the parties or by local rules.</u>	Approved addition. New language emphasizes importance of rule and need for local rules and protocols.
Rule 2.9(B)	No changes.	Approved as written.
Rule 2.9(C)	No changes.	Approved as written.
Rule 2.9(D)	No changes.	Approved as written.
Rule 2.9 Comment 1	1. To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge. <u>A judge may also direct judicial staff, without invoking the notice and disclosure provisions of this rule, to screen written ex parte communications and to take appropriate action consistent with this rule.</u>	Approved as amended. The additional language gives judges a practical method for handling unsolicited letters from litigants.
Rule 2.9 Comment 2	No changes.	Approved as written

Rule 2.9 Comment 3	3. The proscription against communications concerning a proceeding includes communications with <del>lawyers, law teachers, and other</del> persons who are not participants in the proceeding, except to the limited extent permitted by this rule.	Approved as amended.
Rule 2.9 Comment 4	4. <del>A judge may initiate, permit, or consider ex parte communications expressly authorized by law, such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others. When serving on therapeutic or problem-solving courts, such as mental health courts or drug courts, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others. See Application, Part A, Comment 3.</del>	Approved as amended. The language substituted in this comment is more appropriate because local rules or protocols approved by the parties may establish the applicable standard in these courts.
Rule 2.9 Comment 5	No changes.	Approved as written.
Rule 2.9 Comment 6	“The prohibition against a judge <u>independently</u> investigating the facts in a matter extends to information available in all mediums . . . .”	Approved as amended. Minor change makes the statement more accurate.
Rule 2.9 Comment 7	7. A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge’s compliance with this code. <del>Such consultations are not subject to the restrictions of paragraph (A)(2).</del>	Approved as amended. The deletion is consistent with the change in Rule 2.9(A)(2) above.
Rule 2.9 Comment 8	<u>8. An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.</u>	Approved addition. This provision was retained from Canon 3B(7) of the existing code.
Rule 2.9 Comment 9	<u>9. A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.</u>	Approved addition. This provision was retained from Canon 3B(7) of the existing code.
Rule 2.9 Comment 10	<u>10. If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.</u>	Approved addition. This provision was retained from Canon 3B(7) of the existing code.
Rule 2.10	No changes	Approved as written.
Rule 2.10 Comment 1	No changes	Approved as written.



Rule 2.10 Comment 2	2. This rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an <del>official</del> <u>administrative</u> capacity, <del>such as a writ of mandamus, the judge must not comment publicly</del> <u>the judge may comment publicly on the merits of the case.</u> <del>In cases in which the judge is a litigant in a nominal capacity, such as a special action, the judge must not comment publicly.</del>	Approved as amended. The revision makes clear that judges may be sued in different capacities and may respond accordingly.
Rule 2.10 Comment 3	No changes	Approved as written.
Rule 2.11(A)	No changes	Approved as written.
Rule 2.11 (A) (1)	No changes	Approved as written.
Rule 2.11 (A) (2)	No changes	Approved as written.
Rule 2.11 (A) (3)	“ . . . has an economic interest, <u>as defined by this code or Arizona law,</u> in the subject matter in controversy or in a party to the proceeding.”	Approved as amended. Modest change to conform with other similar changes in code.
Rule 2.11 (A) (4)	The judge knows or learns by means of a timely motion that a party, a party’s lawyer, or the law firm of a party’s lawyer has within the previous <del>{insert number}</del> <u>four</u> years <del>[s]</del> made aggregate * contributions * to the judge’s campaign in an amount that [ is greater than \$ <del>{insert amount}</del> for an individual or \$ <del>{insert amount}</del> for an entity] <del>[is reasonable and appropriate for an individual or an entity]</del> <u>the amounts permitted pursuant to A.R.S. § 16-905.</u>	Approved amendment. The rule was modified to reflect that Arizona law sets limits on campaign contributions, and donations within legal limits do not require disqualification subject to maximums established in the code.
Rule 2.11 (A) (5)	The rule was renumbered without substantive changes.	Approved as written.
Rule 2.11 (A) (6)	The opening clause was renumbered but otherwise begins as follows: The judge:	Approved as written.
Rule 2.11 (A) (6)(a)	(a) served as a lawyer in the matter in controversy, or was associated with a lawyer <u>in the preceding four years</u> who participated substantially as a lawyer in the matter during such association;	Approved as amended. The proposed standard should have a reasonable time limit
Rule 2.11(A) (b), (c) & (d)	No changes	Approved as written
Rule 2.11(B)	(B) A judge shall keep <u>reasonably</u> informed about the judge’s personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge’s spouse or domestic partner and minor children residing in the judge’s household.	Approved as amended. The proposed standard is too absolute and should be couched in terms of reasonable diligence on the part of the judge.

Rule 2.11(C)	No changes	Approved as written.
Rule 2.11(D)	<u>(D) Official communications received in the course of performing judicial functions as well as information gained through training programs and from experience do not in themselves create a basis for disqualification.</u>	Approved addition. The new language clarifies that judges do not need to disqualify themselves because of information they learn on the job.
Rule 2.11 Comment 1	1. Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6 <u>5</u> ) apply. <del>In many jurisdictions, the term "recusal" is used interchangeably with the term "disqualification."</del>	Approved as amended. While the term "recusal" has its uses, "disqualification" is the only term mentioned in the current Arizona code.
Rule 2.11 Comment 2	No changes.	Approved as written.
Rule 2.11 Comment 3	No changes.	Approved as written.
Rule 2.11 Comment 4	4. The fact that a lawyer in a proceeding is affiliated with a law firm with which <del>a relative of the judge</del> <u>a member of the judge's family</u> is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (A), or <del>the relative</del> <u>a member of the judge's family</u> is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge's disqualification is required.	Approved as amended. Since the term "relative" is not defined in the Terminology section, it is more helpful to use a term that is.
Rule 2.11 Comment 5	No changes	Approved as written.
Rule 2.11 Comment 6	6. "Economic interest," as set forth in the Terminology section, means ownership of more than a de minimis legal or equitable interest <u>and is further defined, for purposes of compliance with state law, in A.R.S. § 38-502(11).</u> Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:	Approved as amended. A reference to the Arizona statute governing conflicts of interest of public officers was added to assist judges in applying this standard.
Rule 2.11 Comment 6(a)	Comment renumbered without further changes.	Approved as written.
Rule 2.11 Comment 6(b)	Comment renumbered without further changes.	Approved as amended.
Rule 2.11 Comment 6(c)	Comment renumbered without further change.	Approved as written.
Rule 2.11 Comment 6(d)	Comment renumbered without further change.	Approved as written.

Rule 2.11 Comment 7	<u>7. A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Rule 2.11(A)(5); a judge formerly employed by a government agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.</u>	Approved addition. The comment to existing Canon 3E(1)(b) should be retained as a useful guideline for judges.
Rule 2.12	No changes	Approved as written
Rule 2.12(A)	No changes	Approved as written
Rule 2.12(B)	No changes	Approved as written
Rule 2.12(C)	<u>(C) A judge shall require staff, court officials and others subject to the judge's direction and control to comply with the provisions of the Code of Conduct for Judicial Employees adopted by the supreme court.</u>	Approved addition.. Existing Canon 3C(5) was retained as a useful standard that is consistent with this rule.
Rule 2.12 Comment 1	No changes	Approved as written.
Rule 2.12 Comment 2	No changes	Approved as written.
Rule 2.13	No changes	Approved as written.
Rule 2.13(A)	No changes	Approved as written
Rule 2.13(B)	<del>(B) A judge shall not appoint a lawyer to a position if the judge either knows* that the lawyer, or the lawyer's spouse or domestic partner,* has contributed more than \$[insert amount] within the prior [insert number] year[s] to the judge's election campaign, or learns of such a contribution* by means of a timely motion by a party or other person properly interested in the matter, unless:</del>	Approved deletion. This rule has not been adopted by any state. See explanation to Rule 2.11(A)(4).
Rule 2.13 (B) (1)	<del>(1) the position is substantially uncompensated;</del>	Approved deletion. See explanation to Rule 2.13(B).
Rule 2.13 (B) (2)	<del>(2) the lawyer has been selected in rotation from a list of qualified and available lawyers compiled without regard to their having made political contributions; or</del>	Approved deletion. See explanation to Rule 2.13(B).
Rule 2.13 (B) (3)	<del>(3) the judge or another presiding or administrative judge affirmatively finds that no other lawyer is willing, competent, and able to accept the position.</del>	Approved deletion. See explanation to Rule 2.13(B).
Rule 2.13(C)	Rule renumbered without further change.	Approved as amended.

Rule 2.13 Comment 1	No changes	Approved as written
Rule 2.13 Comment 2	2. Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the third degree of relationship of either the judge or the judge's spouse or domestic partner, or the spouse or domestic partner of such relative. <u>Arizona's antinepotism statute, which applies to judicial officers, is found in A.R.S. § 38-481.</u>	Approved as amended. A citation to the state law governing nepotism was added as a useful reference for judges.
Rule 2.13 Comment 3	<del>3. The rule against making administrative appointments of lawyers who have contributed in excess of a specified dollar amount to a judge's election campaign includes an exception for positions that are substantially uncompensated, such as those for which the lawyer's compensation is limited to reimbursement for out-of-pocket expenses.</del>	Approved deletion. See explanation to Rule 2.13(B).
Rule 2.14	No changes	Approved as written.
Rule 2.14 Comment 1	No changes	Approved as written.
Rule 2.14 Comment 2	No changes	Approved as written.
Rule 2.15	No changes	Approved as written.
Rule 2.15(A)	No changes	Approved as written.
Rule 2.15(B)	No changes	Approved as written.
Rule 2.15(C)	No changes	Approved as written.
Rule 2.15(D)	No changes	Approved as written.
Rule 2.15(E)	<u>(E) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by Rule 2.15 are part of a judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.</u>	Approved addition.. This helpful language was retained from Canon 3D(3) of the existing code.
Rule 2.15 Comment 1	No changes	Approved as written.
Rule 2.15 Comment 2	No changes	Approved as written.
Rule 2.16	No changes	Approved as written.
Rule 2.16 Comment 1	No changes	Approved as written.

Rule 2.16 Comment 2	<u>2. Judicial employees have a right to cooperate or communicate with the Commission on Judicial Conduct at any time, without fear of reprisal, for the purpose of discussing potential or actual judicial misconduct.</u>	Approved addition. This rule holds judges to the standard contained in Canon 3H of the employee code.
<b>Canon 3</b>	A JUDGE SHALL CONDUCT THE JUDGE'S <del>PERSONAL AND</del> EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF JUDICIAL OFFICE.	Approved as amended. Although the model code added the word "personal" to the canon "to make it more accurate and complete," the task force felt that the term was too intrusive.
Rule 3.1	No changes	Approved as written.
Rule 3.1(A)	No changes	Approved as written.
Rule 3.1(B)	No changes	Approved as written.
Rule 3.1(C)	(C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality <u>or demean the judicial office;</u>	Approved as amended. The added language is a carry-over from Canon 4A(2) of the current Arizona code.
Rule 3.1(D)	No changes	Approved as written.
Rule 3.1(E)	(E) make use of court premises, staff, stationery, equipment, or other resources, except for <del>incidental use</del> for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.	Approved as amended. The deleted phrase is not needed because the activities described are integral to the role of a judge.
Rule 3.1 Comment 1	No changes	Approved as written.
Rule 3.1 Comment 2	No changes	Approved as written.
Rule 3.1 Comment 3	No changes.	Approved as written.
Rule 3.1 Comment 4	No changes	Approved as written.
Rule 3.1 Comment 5	<u>5. The telecommunications policy of the Arizona judiciary, which defines the permissible uses of electronic equipment, is set forth in Part 1, Chapter 5, § 1-503 of the Arizona Code of Judicial Administration.</u>	Approved addition. This is an essential reference given the subject of Rule 3.1(E).

Rule 3.2	No changes	Approved as written.
Rule 3.2(A)	No changes	Approved as written.
Rule 3.2(B)	No changes	Approved as written.
Rule 3.2(C)	(C) when the judge is acting <del>pro se</del> in a matter involving the judge's <del>legal or economic</del> interests, or when the judge is acting in a fiduciary capacity.	Approved as amended. Latin or legal terms should be replaced with plain English.
Rule 3.2 Comment 1	No changes	Approved as written.
Rule 3.2 Comment 2	No changes	Approved as written.
Rule 3.2 Comment 3	No changes	Approved as written.
Rule 3.3	Rule 3.3: <del>Testifying</del> <u>Acting</u> as a Character Witness A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.	Approved as amended. As noted in Indiana's proposed code, the rule addresses vouching for character as well as testifying in legal proceedings.
Rule 3.3 Comment 1	No changes	Approved as written.
Rule 3.4	No changes	Approved as written.
Rule 3.4 Comment 1	No changes	Approved as written.
Rule 3.4 Comment 2	No changes	Approved as written
Rule 3.5	No changes	Approved as written.
Rule 3.5 Comment 1	No changes	Approved as written.
Rule 3.5 Comment 2	2. This rule is not intended, <del>however,</del> to affect a judge's ability to act on information as necessary to protect the health or safety of <del>the judge or a member of a judge's family, court personnel, or other judicial officers</del> <u>any individual</u> if consistent with other provisions of this code.	Approved as amended. As suggested in the proposed Oklahoma code, a judge's ability to act to protect others should not be limited.
Rule 3.6	No changes	Approved as written.
Rule 3.6(A)	No changes	Approved as written.
Rule 3.6(B)	No changes	Approved as written.

Rule 3.6(C)	<u>A judge's membership or participation in a religious organization as a lawful exercise of the freedom of religion, or a judge's membership or participation in an organization that engages in expressive activity from which the judge cannot be excluded consistent with the judge's lawful exercise of his or her freedom of expression or association, is not a violation of this rule.</u>	Approved addition. This provision was added because the scope of categories included in the rule that might be the subject of invidious discrimination could also be read in some instances to prevent a judge from belonging to various religions or other organizations that engage in "expressive association" protected by the state and federal constitutions. This addition prevents the application of the rule from violating those provisions.
Rule 3.6 Comment 1	No changes	Approved as written.
Rule 3.6 Comment 2	2. An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends upon how the organization selects members, as well as other relevant factors, such as whether <del>the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members</del> <u>the organization stigmatizes excluded persons as inferior and odious, whether it perpetuates and celebrates cultures, historical events, and ethnic or religious beliefs, identities, or traditions,</u> or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.	Approved as amended. The amendments in this rule are based on a recommendation of the American Judicature Society. The new language underscores the harmful nature of invidious discrimination while protecting the rights of judges against an overly broad interpretation of the rule.
Rule 3.6 Comment 3	No changes	Approved as written.
Rule 3.6 Comment 4	4. <del>A judge's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule.</del> 5. This rule <u>also</u> does not <del>apply to</del> <u>prohibit a judge's</u> national or state military service.	Approved as amended. Since comments are not binding in the model code, the first sentence was incorporated in new Rule 3.6(C), and the second sentence was clarified.
Rule 3.7	No changes	Approved as written

Rule 3.7(A)	(A) <u>A judge may not directly solicit funds for an organization.</u> <del>However,</del> Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:	Approved as amended. As noted in the proposed Indiana code, this language was added because the rule was intended to prohibit direct solicitation, but the prohibition is not stated in the model rule.
Rule 3.7 (A)(1)	(1) assisting such an organization or entity in planning related to fund-raising, <u>volunteering services or goods at fund-raising events,</u> and participating in the management and investment of the organization's or entity's funds;	Approved as amended. As suggested in the proposed Indiana code, the new language indicates that this level of assistance is reasonable.
Rule 3.7 (A)(2)	No changes	Approved as written.
Rule 3.7 (A)(3)	No changes	Approved as written.
Rule 3.7 (A)(4)	(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may <del>participate</del> <u>do so</u> only if the event concerns the law, the legal system, or the administration of justice.	Approved as amended. As suggested in the Oklahoma proposed code, the term "participate" is vague here.
Rule 3.7 (A)(5)	(5) making <u>or soliciting</u> recommendations to such a public or private fund-granting organization or entity in connection with its <u>fund-granting</u> programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; and	Approved as amended. The new language clarifies that judges sitting on non-profit boards may solicit recommendations for grants.
Rule 3.7 (A)(6)	No changes	Approved as written.
Rule 3.7(B)	A judge may encourage lawyers to provide pro bono <del>publico</del> legal services.	Approved as amended. As Oklahoma notes in its proposed code, the term "publico" is seldom used when referring to this service.



Rule 3.7(C)	<p><u>(C) Subject to the preceding requirements, a judge may:</u></p> <p><u>(1) Provide leadership in identifying and addressing issues involving equal access to the justice system; developing public education programs; engaging in activities to promote the fair administration of justice; and convening, participating or assisting in advisory committees and community collaborations devoted to the improvement of the law, the legal system, the provision of services, or the administration of justice.</u></p> <p><u>(2) Endorse projects and programs directly related to the law, the legal system, the administration of justice, and the provision of services to those coming before the courts, and may actively support the need for funding of such projects and programs.</u></p> <p><u>(3) Participate in programs concerning the law or which promote the administration of justice.</u></p>	<p>Approved addition. This new language is based on a recommendation of the Conference of Chief Justices. See Resolution 8.</p> <p><i><b>This language is still subject to further modification by the task force.</b></i></p>
Rule 3.7 Comment 1	<p>1. The activities permitted by paragraph (A) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations. <u>An organization concerned with the law, the legal system, and the administration of justice may include an accredited institution of legal education, whether for-profit or not-for-profit.</u></p>	<p>Approved as amended. The new language was added because of the emergence of for-profit and non-for-profit legal education programs.</p>
Rule 3.7 Comment 2	No changes	Approved as written.
Rule 3.7 Comment 3	<p>“Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a <u>participation in</u> violation . . . .”</p>	Approved as amended. Minor change to improve accuracy of the wording.
Rule 3.7 Comment 4	No changes	Approved as written.
Rule 3.7 Comment 5	<p>5. In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono publico legal services, if in doing so the judge does not employ coercion, or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono <del>publico</del> legal work, and participating in events recognizing lawyers who have done pro bono <del>publico</del> work.</p>	<p>Approved as amended. As noted above, the term “publico” is seldom used when referring to this service.</p>
Rule 3.7 Comment 6	<p><u>6. A judge may be an announced speaker at a fund-raising event benefitting indigent representation, scholarships for law students, or public accredited institutions of legal education.</u></p>	<p>Approved addition. An earlier version of this exception is contained in Canon 4(C)(3) of the existing code.</p>
Rule 3.8	No changes	Approved as written.
Rule 3.8 Comment 1	No changes	Approved as written.

Rule 3.9	No changes	Approved as written.
Rule 3.9 Comment 1	No changes	Approved as written.
Rule 3.9 Comment 2	<u>2. Retired, part-time or pro tempore judges may be exempt from this section. See Application, Parts B, C(2) and D(2).</u>	Approved addition. Language added as a cross-reference to Application section.
Rule 3.10	A judge shall not practice law. A judge may <del>act pro se</del> <u>represent himself or herself</u> and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family, but is prohibited from serving as the family member's lawyer in any forum.	Approved as amended. Whenever possible, English phrases are used instead of Latin or legal terms.
Rule 3.10 Comment 1	1. A judge may act <del>pro se</del> <u>as his or her own attorney</u> in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. See Rule 1.3.	Approved as amended. Whenever possible, English phrases are used instead of Latin or legal terms.
Rule 3.10 Comment 2	<u>2. Retired, part-time or pro tempore judges may be exempt from this section. See Application, Parts B, C(1)(b) and D(1)(b).</u>	Approved addition. This language was added as a cross-reference to the Application section.
Rule 3.10 Comment 3	<u>3. Judges who are actively practicing law at the time of their election or appointment to the bench are encouraged to become familiar with ethical considerations immediately affecting the transition from lawyer to judge. Arizona Judicial Ethics Advisory Committee, Opinion 00-07 (December 20, 2000).</u>	Approved addition. This comment is a carryover from the commentary to Canon 4 in the existing code.
Rule 3.10 Comment 4	<u>4. This rule does not prohibit the practice of law pursuant to military service.</u>	Approved addition. This language was used in the proposed Indiana code.
Rule 3.11	No changes	Approved as written.
Rule 3.11 Comment 1	No changes	Approved as written.
Rule 3.11 Comment 2	No changes	Approved as written.
Rule 3.11 Comment 3	<u>3. A judge's uncompensated participation as an officer, director or advisor of an organization concerned with the law, the legal system, or the administration of justice is not prohibited by this rule. See Rule 3.7, Comment 1.</u>	Approved addition. The new language clarifies that a judge can hold positions in businesses and organization involving the defined activities.
Rule 3.11 Comment 4	<u>4. To the extent permitted by Rule 1.3, a judge's participation as a teacher at an educational institution is not prohibited by this rule. See Rule 3.12, Comment 1.</u>	Approved addition. The new language emphasizes that judges should not be prohibited from teaching at public or private schools.

Rule 3.12	No changes	Approved as written.
Rule 3.12 Comments 1 and 2	No changes.	Approved as written.
Rule 3.13(A)	No Changes	Approved as written
Rule 3.13(B)	No Changes	Approved as written
Rule 3.13 (B) (1) thru (5)	No Changes	Approved as written
Rule 3.13 (B) (6)	(6) scholarships, fellowships, and similar benefits or awards if <del>they are available to similarly situated persons who are not judges, based upon the same terms and criteria; granted on the same terms</del> and based on the same criteria applied to other applicants;	Approved as amended. The language was simplified to improve clarity.
Rule 3.13 (B) (7) and (8)	No changes	Approved as written.
Rule 3.13(C)	<del>Unless otherwise prohibited by law or by paragraph (A), a judge may accept the following items, and must report such acceptance to the extent required by Rule 3.15:</del>	Approved deletion. The task force consolidated Rules 3.13(B) and (C), changing (B) into a comprehensive list of permissible activities.
Rule 3.13 (B) (9)	<del>(+ 9)</del> gifts incident to a public testimonial; <u>or</u>	Approved as amended. Rule 3.13(C)(1) was renumbered but the content remains the same. These gifts should be treated the same as other gifts.
Rule 3.13 (B) (10)	<del>(± 10)</del> invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge: (a) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or (b) an event associated with any of the judge's educational, religious, charitable, fraternal or civic activities permitted by this code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge; <del>and</del> .	Approved as amended. Ruled 3.13(C)(2) was renumbered as noted above but the content remains the same. These gifts should be treated the same as other gifts.
Rule 3.13 (C) (3)	<del>(3) gifts, loans, bequests, benefits, or other things of value, if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.</del>	Approved deletion. The gifts described here should not be permitted and are subsumed in Rule 3.13(A)
Rule 3.13 (C)	<u>(C) A judge shall report the acceptance of any gift, loan, bequest, or other thing of value as required by Rule 3.15.</u>	Approved addition. This rule replaces the preceding rule and serves as a reminder of reporting requirements.

Rule 3.13 Comment 1	1. Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. Rule 3.13 imposes restrictions upon the acceptance of such benefits, according to the magnitude of the risk. Paragraph (B) identifies circumstances in which the risk that the acceptance would appear to undermine the judge's independence, integrity, or impartiality is low, and explicitly provides that such items need not be publicly reported. As the value of the benefit or the likelihood that the source of the benefit will appear before the judge increases, the judge is either prohibited under paragraph (A) from accepting the gift, or required under paragraph (C) to publicly report it <u>prohibits the acceptance of such benefits except in circumstances where the risk of improper influence is low and subject to applicable financial disclosure requirements. See Rule 3.15.</u>	Approved as amended. The task force rejected the model code's three-tier approach to receiving and reporting gifts according to levels of risk in favor of simplified language that prohibits all but low risk gifts that are subject to reporting requirements. Similar language appears in Ohio's proposed new code.
Rule 3.13 Comment 2	2. Gift-giving between friends and relatives is a common occurrence, and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification under Rule 2.11, there would be no opportunity for a gift to influence the judge's decision making. Paragraph (B)(2) places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances, <del>and does not require public reporting</del> <u>but may require public reporting.</u>	Approved as amended. This change puts judges on notice that all gifts are subject to public reporting requirements.
Rule 3.13 Comment 3	<u>3. The receipt of ordinary social hospitality, commensurate with the occasion, is not likely to undermine the integrity of the judiciary. However, the receipt of other gifts and things of value from an attorney or party who has or is likely to come before the judge will be appropriate only in the rarest of circumstances.</u>	Approved addition. This comment, adopted from the Indiana code, reminds judges to be cautious about accepting gifts from attorneys and parties.
Rule 3.13 Comment 4	<del>3</del> 4. Comment renumbered without further change.	Approved as amended.
Rule 3.13 Comment 5	<del>4</del> 5. <del>Rule 3.13 applies only to acceptance of gifts or other things of value by a judge. Nonetheless, if a gift or other benefit is given to the judge's spouse, domestic partner, or member of the judge's family residing in the judge's household, it may be viewed as an attempt to evade Rule 3.13 and influence the judge indirectly. Where the gift or benefit is being made primarily to such other persons, and the judge is merely an incidental beneficiary, this concern is reduced. A judge should, however, remind family and household members of the restrictions reporting requirements imposed upon judges by Rule 3.15, and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits.</del>	Approved as amended. This comment, as amended, serves as a reminder that state law requires the reporting of gifts to members of a judge's family and household.
Rule 3.13 Comment 6	Comment and rule numbers in text changed.	Approved as amended to conform numbers to changes.
Rule 3.14	No changes	Approved as written

Rule 3.14 Comment 1	No changes	Approved as written
Rule 3.14 Comment 2	No changes	Approved as written
Rule 3.14 Comment 3	3. A judge must <del>assure himself or herself</del> <u>determine whether</u> <del>that</del> acceptance of reimbursement or fee waivers would not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:	Approved as amended. The stricken language, which is awkward, was replaced with language used in the Ohio proposed code.
Rule 3.14 Comments 3(a) thru (h)	No changes	Approved as written
Rule 3.15	Rule 3.15: <u>Financial</u> Reporting Requirements	Approved as amended. This change reflects the fact that the rule only involves financial reporting.
Rule 3.15(A)	(A) A judge shall <del>publicly report the amount or value of:</del>	Approved as amended. The entire rule was changed to reflect the reporting requirements under Arizona law that obviate the need for a complex reporting scheme in the code.
Rule 3.15 (1)	<del>(1) compensation received for extrajudicial activities as permitted by Rule 3.12;</del>	Approved deletion. See explanation in Rule 3.15(A), above.
Rule 3.15 (2)	<del>(2) gifts and other things of value as permitted by Rule 3.13(C); unless the value of such items, alone or in the aggregate with other items received from the same source in the same calendar year, does not exceed \$[insert amount]; and file annually the financial disclosure statement required by A.R.S. § 38-542 or other applicable law. The completion and filing of the annual financial disclosure statement fulfills the reporting requirements set forth in this code.</del>	Approved as amended. See explanation in Rule 3.15(A), above.
Rule 3.15 (3)	<del>(3) reimbursement of expenses and waiver of fees or charges permitted by Rule 3.14(A), unless the amount of reimbursement or waiver, alone or in the aggregate with other reimbursements or waivers received from the same source in the same calendar year, does not exceed \$[insert amount];</del>	Approved deletion. See explanation in Rule 3.15(A), above.
Rule 3.15(B)	<del>(B) When public reporting is required by paragraph (A), a judge shall report the date, place, and nature of the activity for which the judge received any compensation; the description of any gift, loan, bequest, benefit, or other thing of value accepted; and the source of reimbursement of expenses or waiver or partial waiver of fees or charges.</del>	Approved deletion. See explanation in Rule 3.15(A), above.

Rule 3.15(C)	<del>(C) The public report required by paragraph (A) shall be made at least annually, except that for reimbursement of expenses and waiver or partial waiver of fees or charges, the report shall be made within thirty days following the conclusion of the event or program.</del>	Approved deletion. See explanation in Rule 3.15(A), above.
Rule 3.15(D)	<del>(D) Reports made in compliance with this rule shall be filed as public documents in the office of the clerk of the court on which the judge serves or other office designated by law, and, when technically feasible, posted by the court or office personnel on the court's website.</del>	Approved as amended. See explanation in Rule 3.15(A), above.
Rule 3.15 Comment 1	<u>1. The information required to be reported by Rules 3.12, 3.13, and 3.14 is a portion of the information that must be included on the annual financial disclosure statement mandated by A.R.S. § 38-542 or other applicable law. A judge is obligated to disclose fully and accurately all information requested on the annual disclosure statement and does not fulfill the statutory obligation by reporting only the information required by Rules 3.12, 3.13, and 3.14. Applicable law requires sufficient disclosure of the financial interests of and gifts to a judge and members of his or her household to promote judicial accountability and integrity.</u>	Approved addition. See explanation in Rule 3.15(A), above.
Rule 3.15 Comment 2	<u>2. To avoid needless repetition of disclosure requirements, the Arizona judiciary deems compliance with the substantive legal requirement as sufficient to meet the ethical obligations of a judge and thus incorporates them in this code.</u>	Approved addition. See explanation in Rule 3.15(A), above.
Rule 3.15 Comment 3	<u>3. Reimbursement of expenses from a judge's employer need not be reported under Rule 3.14(C) or Rule 3.15.</u>	Approved addition. See explanation in Rule 3.15(A), above.
Rule 3.16	<u>Rule 3.16: Conducting Weddings</u>	Approved addition. This rule, which appears in the existing code, is unique to Arizona and should be retained in the new code.
Rule 3.16(A)	<u>(A) The performance of wedding ceremonies by a judge is a discretionary function rather than a mandatory function of the court.</u>	Approved addition. See explanation in Rule 3.16, above.
Rule 3.16(B)	<u>(B) A judge shall not interrupt or delay any regularly scheduled or pending court proceeding in order to perform a wedding ceremony.</u>	Approved addition. See explanation in Rule 3.16, above.
Rule 3.16(C)	<u>(C) A judge shall not advertise his or her availability for performing wedding ceremonies.</u>	Approved addition. See explanation in Rule 3.16, above.
Rule 3.16(D)	<u>(D) A judge shall not charge or accept a fee, honorarium, gratuity or contribution for performing a wedding ceremony during court hours.</u>	Approved addition. See explanation in Rule 3.16, above.

Rule 3.16(E)	<u>(E) A judge may charge a reasonable fee or honorarium to perform a wedding ceremony during non-court hours, whether the ceremony is performed in the court or away from the court.</u>	Approved addition. See explanation in Rule 3.16, above.
<b>Canon 4</b>	<i>Much of the language in this canon is essentially the same as Canon 5 in the current Arizona code which makes no distinction for how judges are elected, appointed or retained in their respective offices. As a result, many of the rules in this section of the model code were edited or deleted to conform to the existing code.</i>	Approved as amended. Note, however, that the new code contains a major addition on campaign standards.
Rule 4.1	No changes	Approved as written
Rule 4.1(A)	(A) <del>Except as permitted by law,* or by Rules 4.2, 4.3, and 4.4, a</del> <u>A judge or a judicial candidate for election to judicial office shall not do any of the following:</u>	Approved as amended. As noted in the proposed Ohio code, this is a better construction for introducing a long series of prohibited acts.
Rule 4.1 (A) (1)	No changes	Approved as written
Rule 4.1 (A) (2)	(2) make speeches on behalf of a political organization <u>or another candidate for public office;</u>	Approved as amended. The standard in the existing code is retained.
Rule 4.1 (A) (3)	(3) publicly endorse or oppose <del>a</del> <u>another</u> candidate for any public office, <del>except a judge may serve as a reference or comment on the qualifications of a candidate for appointment or re-appointment to an appointive judicial office;</del>	Approved as amended. The change makes it clear that judges may endorse themselves but not other candidates. They may also comment on qualifications of candidates as noted in Rule 1.3, Comment 3.
Rule 4.1 (A) (4)	(4) <del>solicit funds for; or pay an assessment to; or make a contribution*</del> a political organization or <del>a candidate for public office, make contributions to any candidate or political organization in excess of the amounts permitted by law, or make total contributions in excess of fifty percent of the cumulative total permitted by law. See, e.g., A.R.S. § 16-905.</del>	Approved as amended. The change permits a judge to make personal campaign contributions to other candidates consistent with generally-applicable limits but restricts total contributions to one-half of those permitted members of the general public.
Rule 4.1 (A) (5)	<del>(5) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;</del>	Approved deletion. This activity is permitted under the existing code and is covered by Rule 4.1(C)(2) below.
Rule 4.1 (A) (6)	<del>(6) publicly identify himself or herself as a candidate of a political organization;</del>	Approved deletion. This activity is permitted under the existing code.
Rule 4.1 (A) (7)	<del>(7) seek, accept, or use endorsements from a political organization;</del>	Approved as amended. This activity is permitted under the existing code.

Rules 4.1 (A) (5)	<u>(5) actively take part in any political campaign other than his or her own campaign for re-election or retention in office;</u>	Approved addition. This activity was first prohibited in the 1975 Arizona code and should be retained in the new code.
Rule 4.1 (A) (6)	<u>(6)</u> Renumbered without textual changes.	Approved as amended. Internal modification.
Rule 4.1 (A) (7)	<u>(7) use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others, except as provided by law;</u>	Approved as amended This change acknowledges that campaign contributions are governed by state election laws.
Rule 4.1 (A) (8)	<u>(8)</u> Renumbered without further changes.	Approved as written.
Rule 4.1 (A) (9)	<u>(9)</u> Renumbered without further changes.	Approved as written.
Rule 4.1 (A) (10)	<u>(10)</u> Renumbered without further changes.	Approved as written.
Rule 4.1 (A) (11)	<u>(11)</u> Renumbered without further changes.	Approved as written.
Rule 4.1 (B)	No changes	Approved as written
Rule 4.1 (C)	<u>(C) Except as prohibited by this code, a judge may:</u> <u>(1) engage in activities, including political activities, to improve the law, the legal system and the administration of justice; and</u> <u>(2) purchase tickets for political dinners or other similar functions but attendance at any such functions shall be restricted so as not to constitute a public endorsement of a candidate or cause otherwise prohibited by these rules.</u>	Approved as amended. These activities are permitted in the existing code and should be continued in the new code.
Rule 4.1 Comment 1	1. Even when subject to public election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. <del>This canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates, taking into account the various methods of selecting judges.</del>	Approved as amended. The approach used in the existing code does not distinguish between judges on the basis of how they are selected, elected or retained.
Rule 4.1 Comment 2	2. When a person becomes a judicial candidate, this canon become applicable to his or her conduct. <u>A successful judicial candidate is subject to discipline under the code for violation of any of the rules set forth in Canon 4, even if the candidate was not a judge during the period of candidacy. An unsuccessful judicial candidate who is a lawyer and violates the code may be subject to discipline under applicable court rules governing lawyers.</u>	Approved as amended. The additional language serves as a reminder that candidates are subject to discipline for misconduct during campaigns. Similar language appears in the proposed Oklahoma code.



Rule 4.1 Comment 3	3. Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence. Although judges and judicial candidates may register to vote as members of a political party, they are prohibited by paragraph (A)(1) from assuming leadership roles in political organizations. <u>Examples of such leadership roles include precinct committeemen and delegates or alternates to political conventions. Such positions would be inconsistent with an independent and impartial judiciary.</u>	Approved as amended. The task force approved the comment but added specific examples of prohibited political activities that come up in every election. Similar language is used in the proposed Minnesota code.
Rule 4.1 Comment 4	4. Paragraphs (A)(2) and (A)(3) prohibit judges and judicial candidates from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from abusing the prestige of judicial office to advance the interests of others. <u>See Rule 1.3: Paragraph (A)(3) does not prohibit a judge or judicial candidate from making recommendations in complying with Rule 1.3 and the related comments.</u> These rules do not prohibit candidates from campaigning on their own behalf, <del>or from endorsing</del> or opposing candidates for the same judicial office for which they are running. <u>See Rules 4.2(B)(2) and 4.2(B)(3).</u>	Approved as amended. The task force approved the comment but clarified that judges or judicial candidates may recommend candidates for judicial office and provide information concerning the qualifications of candidates.
Rule 4.1 Comment 5	<u>5. Paragraph (A)(3) does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office.</u>	Approved addition. This is a carryover from the existing code.
Rule 4.1 Comment 6	<u>6. A candidate does not publicly endorse another candidate for public office by having that candidate's name on the same ticket.</u>	Approved addition. This comment clarifies the rule in Arizona.
Rule 4.1 Comment 7	<del>5</del> <u>7.</u> Although members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is no "family exception" to the prohibition in paragraph (A)(3) against a judge or candidate publicly endorsing candidates for public office. A judge or judicial candidate must not become involved in, or publicly associated with, a family member's political activity or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take and should urge members of their families to take reasonable steps to avoid any implication that <del>they</del> <u>the judge or judicial candidate</u> endorses any family member's candidacy or other political activity.	Approved as amended. The task force approved the comment but clarified to whom the deleted pronoun refers.
Rule 4.1 Comment 8	<del>6</del> <u>8.</u> Judges and judicial candidates retain the right to participate in the political process as voters in <del>both primary and general</del> <u>all</u> elections. For purposes of this canon, participation in a caucus-type election procedure does not constitute public support for or endorsement of a political organization or candidate, and is not prohibited by paragraphs (A)(2) or (A)(3).	Approved as amended. Internal modification.

Rule 4.1 Comment 7	<del>7. Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Paragraph (A)(11) obligates candidates and their committees to refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading.</del>	Approved as deleted. The task force approved a new Rule 4.3 that incorporates this comment. In addition, the task force found no reason to distinguish between types of elections.
Rule 4.1 Comment 8	<del>8. Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate paragraphs (A)(aa), (A)(12*), or (A)(13-9), the candidate may make a factually accurate public response. In addition, when an independent third party has made unwarranted attacks on a candidate's opponent, the candidate may disavow the attacks, and request the third party to cease and desist.</del>	Approved as deleted. The task force approved a new Rule 4.3 that addresses this issue.
Rule 4.1 Comment 9	<del>8</del> 9. Subject to paragraph (A)( <del>12</del> 9), a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her during a campaign, although it is <del>preferable</del> permissible for someone else, <u>including another judge</u> , to respond if the allegations relate to a pending case.	Approved as amended. The task force approved the comment and made minor changes to clarify it.
Rule 4.1 Comment 10	<del>9</del> 10. Paragraph (A)( <del>12</del> 8) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately effect the outcome of a matter.	Approved as amended. Internal modification.
Rule 4.1 Comment 11	<u>11. Paragraph (A)(9) must be read in context with Rule 2.10 that allows judges to make public statements in the course of their official duties.</u>	Approved addition. This comment draws attention to a related rule.
Rule 4.1 Comment 12	<del>11</del> 12. Comment renumbered without further changes.	Approved as amended. Internal modification.
Rule 4.1 Comment 13	<del>12</del> 13. Comment renumbered without further changes.	Approved as amended. Internal modification.
Rule 4.1 Comment 14	<del>13</del> 14. Comment renumbered without further changes.	Approved as amended. Internal modification.
Rule 4.1 Comment 15	<del>14</del> 15. Comment renumbered without further changes.	Approved as amended. Internal modification.
Rule 4.1 Comment 16	<del>15</del> 16. Comment renumbered without further changes.	Approved as amended. Internal modification.

Rule 4.2	Political and Campaign Activities of Judicial Candidates in <del>Public Elections</del>	Approved as amended. The task force adopted the approach used in the existing Arizona code which does not distinguish between judges on the basis of how they are selected, elected or retained.
Rule 4.2(A)	(A) A judicial candidate in a <del>partisan, nonpartisan, or retention public election*</del> shall:	Approved as amended. See explanation in Rule 4.2, above.
Rule 4.2 (A) (1)	No changes	Approved as written
Rule 4.2 (A) (2)	No changes	Approved as written
Rule 4.2 (A) (3)	(3) Comment renumbered without further changes.	Approved as amended. Internal modification.
Rule 4.2 (A) (4)	(4) Comment renumbered and internal commas deleted.	Approved as amended. Internal modification.
Rule 4.2 (B)	<del>(B) A candidate for elective judicial office may, unless prohibited by law,* and not earlier than [insert amount of time] before the first applicable primary election, caucus, or general or retention election: — (1) establish a campaign committee pursuant to the provisions of Rule 4.4; — (2) speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, websites, or other campaign literature; — (3) publicly endorse or oppose candidates for the same judicial office for which he or she is running;</del>	Approved deletion. The task force adopted the approach used in the existing code which does not distinguish between judges on the basis of how they are selected, elected or retained.
Rule 4.2 (B), continued	<del>— (4) attend or purchase tickets for dinners or other events sponsored by a political organization* or a candidate for public office; — (5) seek, accept, or use endorsements from any person or organization other than a partisan political organization; and — (6) contribute to a political organization or candidate for public office, but not more than \$[insert amount] to any one organization or candidate.</del>	Approved deletion. This is a continuation of the preceding section.
Rule 4.2(C)	<del>(C) A judicial candidate in a partisan public election may, unless prohibited by law, and not earlier than [insert amount of time] before the first applicable primary election, caucus, or general election: — (1) identify himself or herself as a candidate of a political organization; and — (2) seek, accept, and use endorsements of a political organization.</del>	Approved deletion. The task force adopted the approach used in the existing code which does not distinguish between judges on the basis of how they are selected, elected or retained.

Rule 4.2 Comment 1	<del>[1] Paragraphs (B) and (C) permit judicial candidates in public elections to engage in some political and campaign activities otherwise prohibited by Rule 4.1. Candidates may not engage in these activities earlier than [insert amount of time] before the first applicable electoral event, such as a caucus or a primary election.</del>	Approved deletion. See explanation in Rule 4.2(C)
Rule 4.2 Comment 2	<del>[2] Despite paragraphs (B) and (C), judicial candidates for public election remain subject to many of the provisions of Rule 4.1. For example, a candidate continues to be prohibited from soliciting funds for a political organization, knowingly making false or misleading statements during a campaign, or making certain promises, pledges, or commitments related to future adjudicative duties. See Rule 4.1(A), paragraphs (4), (11), and (13).</del>	Approved deletion. See explanation in Rule 4.2(C)
Rule 4.2 Comment 3	<del>[3] In partisan public elections for judicial office, a candidate may be nominated by, affiliated with, or otherwise publicly identified or associated with a political organization, including a political party. This relationship may be maintained throughout the period of the public campaign, and may include use of political party or similar designations on campaign literature and on the ballot.</del>	Approved deletion. See explanation in Rule 4.2(C)
Rule 4.2 Comment 4	<del>[4] In nonpartisan public elections or retention elections, paragraph (B)(5) prohibits a candidate from seeking, accepting, or using nominations or endorsements from a partisan political organization.</del>	Approved deletion. See explanation in Rule 4.2(C)
Rule 4.2 Comment 5	<del>[5] Judicial candidates are permitted to attend or purchase tickets for dinners and other events sponsored by political organizations.</del>	Approved deletion. See explanation in Rule 4.2(C)
Rule 4.2 Comment 6	<del>[6] For purposes of paragraph (B)(3), candidates are considered to be running for the same judicial office if they are competing for a single judgeship or if several judgeships on the same court are to be filled as a result of the election. In endorsing or opposing another candidate for a position on the same court, a judicial candidate must abide by the same rules governing campaign conduct and speech as apply to the candidate's own campaign.</del>	Approved deletion. See explanation in Rule 4.2(C)
Rule 4.2 Comment 7	<del>[7] Although judicial candidates in nonpartisan public elections are prohibited from running on a ticket or slate associated with a political organization, they may group themselves into slates or other alliances to conduct their campaigns more effectively. Candidates who have grouped themselves together are considered to be running for the same judicial office if they satisfy the conditions described in Comment [6].</del>	Approved deletion. See explanation in Rule 4.2(C)
Rule 4.3	Activities of Candidates for Appointive Judicial Office A candidate for appointment to judicial office may: —(A) communicate with the appointing or confirming authority, including any selection, screening, or nominating commission or similar agency; and —(B) seek endorsements for the appointment from any person or organization other than a partisan political organization.	Approved deletion. The task force adopted the approach used in the existing code which does not distinguish between judges on the basis of how they are selected, elected or retained.

Rule 4.3 Comment 1	<del>[1] When seeking support or endorsement, or when communicating directly with an appointing or confirming authority, a candidate for appointive judicial office must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office. See Rule 4.1(A)(13).</del>	Approved deletion. See explanation in Rule 4.3
Rule 4.3 (A) through (G)	<p><u>Campaign Standards and Communications.</u></p> <p><u>During the course of any campaign for nomination or election to judicial office, a judicial candidate, by means of campaign materials, including sample ballots, advertisements in the media, electronic communications, or a speech, press release, or any other public communication, shall not knowingly or with reckless disregard do any of the following:</u></p> <p><u>(A) Post, publish, broadcast, transmit, circulate, or distribute information concerning the judicial candidate or an opponent that would be deceiving or misleading to a reasonable person;</u></p> <p><u>(B) Manifest bias or prejudice toward an opponent that would be prohibited in the performance of judicial duties under Rule 2.3(B), which prohibition does not preclude a judicial candidate from making legitimate reference to the listed factors when they are relevant to the qualifications for judicial office;;</u></p> <p><u>(C) Use the title of an office not currently held by a judicial candidate in a manner that implies that the judicial candidate currently holds that office;</u></p> <p><u>(D) Use the term “judge” when the judicial candidate is not a judge unless that term appears after or below the name of the judicial candidate and is accompanied by the words “elect” or “vote,” in prominent lettering, before the judicial candidate’s name or the word “for,” in prominent lettering, between the name of the judicial candidate and the term “judge;”</u></p> <p><u>(E) Use the term “re-elect” when the judicial candidate has never been elected at a general or special election to the office for which he or she is a judicial candidate;</u></p> <p><u>(F) Misrepresent the identity, qualifications, present position, or any other fact about the judicial candidate or an opponent;</u></p> <p><u>(G) Make a false or misleading statement concerning the formal education or training completed or attempted by a judicial candidate; a degree, diploma, certificate, scholarship, grant, award, prize or honor received, earned, or held by a judicial candidate; or the period of time during which a judicial candidate attended any school, technical program, college or other educational institution;</u></p>	Approved addition. The task force concluded that a new rule, based on a similar rule in the proposed Oklahoma code, will provide helpful guidance and answer recurring questions concerning campaign standards and communications.
Rules 4.3 (H) through (J)	<p><u>(H) Make a false or misleading statement concerning the professional, occupational, or vocational licenses held by a judicial candidate, or the candidate’s employment history and descriptions of work-related titles or positions;</u></p> <p><u>(I) Make a false or misleading statement about an opponent’s personal background or history;</u></p> <p><u>(J) Falsely identify the source of a statement, issue statements under the name of another person without authorization, or falsely state the endorsement of or opposition to a judicial candidate by a person, organization, political party, or publication.</u></p>	Approved additions. This is a continuation of the preceding section.

Rule 4.3, Comment 1	<u>1. A judicial candidate must be scrupulously accurate, fair and honest in all statements made by the candidate and his or her campaign committee. This rule obligates the candidate and the committee to refrain from making statements that are false or misleading or that omit facts necessary to avoid misleading voters.</u>	Approved addition. This language, which originally appeared in Rule 4.1, Comment 7, was amended and relocated here as part of the new rule.
Rule 4.3, Comment 2	<u>2. A sitting judge, who is a judicial candidate for an office other than the court on which he or she currently serves, violates Rule 4.3(C) if he or she used the title “judge” without identifying the court on which the judge currently serves.</u>	Approved addition. This language was adapted from the proposed Oklahoma code.
Rule 4.3, Comment 3	<u>3. Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate’s integrity or fitness for judicial office. As long as the candidate does not violate this rule, the candidate may make a factually accurate public response. In addition, when an independent third party has made unwarranted attacks on a candidate’s opponent, the candidate may disavow the attacks, and request the third party to cease and desist.</u>	Approved addition. This language originally appeared as Comment 8 in Rule 4.1 of the Model Code. It was deleted from that rule, amended slightly and inserted in new Rule 4.3, as Comment 3.
Rule 4.4	No change.	Approved as written.
Rule 4.4(A)	The following reference was added at the end of the text in this rule: <u>See generally A.R.S. § 16-901 et seq.</u>	Approved as amended. The reference draws attention to the related statute.
Rule 4.4(B)	(B) A judicial candidate subject to public election shall direct his or her campaign committee <u>to solicit and accept only such campaign contributions as are permissible by law and to comply with all applicable statutory requirements for disclosure and divestiture of campaign contributions.</u>	Approved as amended. The task force adopted the approach used in the existing code which does not distinguish between judges on the basis of how they are selected, elected or retained.
Rule 4.4 (B) (1)	<del>(1) to solicit and accept only such campaign contributions* as are reasonable, in any event not to exceed, in the aggregate,* \$[insert amount] from any individual or \$[insert amount] from any entity or organization;</del>	Approved deletion. See explanation in Rule 4.3(B).
Rule 4.4 (B) (2)	<del>(2) not to solicit or accept contributions for a candidate’s current campaign more than [insert amount of time] before the applicable primary election, caucus, or general or retention election, nor more than [insert number] days after the last election in which the candidate participated; and</del>	Approved deletion. See explanation in Rule 4.3(B).
Rule 4.4 (B) (3)	<del>(3) to comply with all applicable statutory requirements for disclosure and divestiture of campaign contributions, and to file with [name of appropriate regulatory authority] a report stating the name, address, occupation, and employer of each person who has made campaign contributions to the committee in an aggregate value exceeding \$[insert amount]. The report must be filed within [insert number] days following an election, or within such other period as is provided by law.</del>	Approved deletion. See explanation in Rule 4.3(B).

Rule 4.4 Comment 1	1. Judicial candidates are prohibited from personally soliciting campaign contributions or personally accepting campaign contributions. See Rule 4.1(A)( <del>8</del> <u>5</u> ). This rule recognizes that in many jurisdictions, judicial candidates must raise campaign funds to support their candidacies, and permits candidates, other than candidates for appointive judicial office, to establish campaign committees to solicit and accept <del>reasonable</del> <u>lawful</u> financial contributions or in-kind contributions.	Approved as amended. The standard in Arizona is “lawful” rather than “reasonable” contributions.
Rule 4.4 Comment 2	No changes	Approved as written
Rule 4.4 Comment 3	3. <del>At the start of a campaign, the candidate must instruct the campaign committee to solicit or accept only such contributions as are reasonable in amount, appropriate under the circumstances, and in conformity with applicable law. Although lawyers and others who might appear before a successful candidate for judicial office are permitted to make campaign contributions, the candidate should instruct his or her campaign committee to be especially cautious in connection with such contributions, so they do not create grounds for disqualification if the candidate is elected to judicial office.</del> During the campaign, the candidate and his or her campaign committee should consider whether a contribution may affect the <u>independence, integrity and impartiality of the judge. The judicial candidate and his or her campaign committee should be aware that contributions could create grounds for disqualification if the candidate is elected to judicial office.</u> See Rule 2.11.	Approved as amended. The substituted language is more consistent with the wording in other sections of the code.
Rule 4.5	No changes.	Approved as written.
Rule 4.5(A)	(A) Upon becoming a candidate for a nonjudicial elective office <u>other than as a candidate to a constitutional convention</u> , a judge shall resign from judicial office, <del>unless permitted by law* to continue to hold judicial office.</del>	Approved as amended. The changes reflect the standard in the existing code.
Rule 4.5(B)	No changes	Approved as written
Rule 4.5 Comment 1	No changes	Approved as written
Rule 4.5 Comment 2	No changes	Approved as written